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09/154,646	09/17/1998	CAROLYN JEAN CUPP	P97.2391	7285

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EXAMINER
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HENDRICKS, KEITH D

ART UNIT	PAPER NUMBER
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1761

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Please find below and/or attached an Office communication concerning this application or proceeding.



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09/154,646

9/17/98

EXAMINER

*K Hendricks*

ART UNIT

PAPER

23

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Commissioner for Patents

**Supplemental Examiner's Answer and Response to Remand**

This action is in response to the remand communication from the Board of Patent Appeals and Interferences, paper # 22, of January 30, 2003.

It appears that the application has been remanded for consideration of two issues:

- 1) Clarification and indication of whether the Kent et al. reference, submitted with appellants' reply brief, has been considered.
- 2) Consideration and comment on a potential rejection under 35 U.S.C. §103, regarding the claim limitation of "a moisture content of less than 10% by weight."

**Examiner's response**

**Issue # 1.**

With regard to the first issue, the Kent et al. reference had, and has again, been considered. The examiner regrets any inconvenience for the lack of indication of this point.

Further regarding the issue of insoluble fiber content, to which appellants have submitted the Kent et al. reference, appellants' arguments are noted, and it is agreed that Simone et al. teaches the use of corn cob fractions as a source of cellulosic fiber content. The use of such corn cob fractions in the recited amounts of from about 20% to 50% would, at the lowest possible amount, provide an insoluble fiber content of the pet product in the range of approximately 18%-20%, thus being outside the instantly-claimed range of 2%-15%. It is also noted that, as opposed to the other options recited at column 3, corn cob fractions would be considered to contain the least amount of cellulosic and insoluble fiber.

- Thus, instant claims 4-5, 8-12 and 16, which recite a range of insoluble fiber of 2%-15% have herein been indicated as free of the prior art.
- Claims 4-5 and 16 are dependent claims, and thus are objected to as being dependent upon a rejected claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

However, as opposed to appellants' statement at the top of page 6 of the reply brief, Simone et al. clearly does "teach an insoluble fiber content of 15% or greater." Appellants appear to argue that Simone et al. does not teach an insoluble fiber content as low as 2-15% (which was indicated as allowable above), *and* yet does not teach a content of above 2% (it is unclear as to how appellants have arrived at the limitation of "15% or greater"). Appellants' themselves have submitted the Kent et al. reference which shows that corn cob fractions collectively contain approximately 90% insoluble fiber (cellulose, pentosans and lignins). Thus, utilization of corn cob fractions in amounts of about 20%-50% as taught by Simone et al. would result in pet products containing insoluble fiber amounts in the range of 18-45% of the total product. This clearly meets the *claim* limitation of "at least 2% by weight insoluble fiber".

**Issue #2:**

With regard to the second issue, the Board has suggested that the examiner consider potential references and rejections under 35 U.S.C. §103, concerning the claim limitation of "a moisture content of less than 10% by weight."

It is respectfully noted that the examiner has considered such rejections, throughout the prosecution of the application. As the closest prior art, Simone et al., teaches a moisture content of "about 10 to about 30%" (bottom of column 5), this clearly reads upon the instant claim language of "less than 10% by weight", since "about 10%" encompasses amounts both above *and below* 10%. In this regard, reference is made to the examiner's answer, pages 4-5 and 11-13. It is noted that claims 21-23 have previously been indicated as free of the prior art, which claims specifically and clearly recite moisture content ranges acceptably considered to be outside the range of the teachings of the reference.

However, as with the percentages of the insoluble fiber, there is no motivation – either within the Simone et al. reference or in the general prior art – to modify the teachings of the disclosed amounts. There is no motivation or legal rationale to support a rejection of obviousness for modifying the teachings regarding the moisture content to a specific amount below 10%. While the reference clearly states that amounts of "about 10%" are taught, and while this clearly encompasses amounts both above and below 10% (thus the rejection under 35 U.S.C. §102), no specific integer or fraction of a percent are provided except for "about 10%", such that one of ordinary skill in the art would be motivated to *modify* the teachings of the reference. Nor do the rejected claims provide for specific percentage amounts other than "less than 10%". It is believed that a rejection under 35 U.S.C. §103 would be improper, and

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furthermore, it is believed that the current rejection under 35 U.S.C. §102 is proper and should be sustained.

Status of the claims:

- Claims 1-3, 6-7, 13-15, 17-20 and 24 are under appeal.
- Claims 4-5, 16 and 21-23 are objected to.
- Claims 8-12 are allowed.

Respectfully submitted,

  
KEITH HENDRICKS  
PRIMARY EXAMINER